

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

CNS INTERNATIONAL MINISTRIES, INC.,)
v.)
Plaintiff,)
ROBERT KNODELL, Acting Director of the) Case No. 2:21-CV-65 RLW
Missouri Department of Social Services,)
Defendant.)

DECLARATION OF DAVID MELTON

I, David Melton, an officer at CNS International Ministries, Inc., hereby declare as follows:

1. I am an individual and a citizen of the State of Missouri and of the United States, and I am President and General Counsel of CNS International Ministries, Inc. (CNSIMI).
2. On October 20, 2021, I wrote to the Missouri State Highway Patrol, expressing concerns regarding the legality of using certain federal databases to obtain information regarding individuals not directly involved in child care. See Exhibit 1.
3. Heartland Christian College is a distinct legal entity from CNSIMI.
4. The LERCF notification form submitted by CNSIMI on October 12, 2021, also included copies of the Medical Records Policy, correspondence with the Newark Fire Email Correspondence, and a Local Health Department Letter. The form and attachments were attached to the included email because the web portal was not working. See Exhibit 2 (a copy of the unmodified blank form is also attached).

VERIFICATION

Declaration of David Melton in Lieu of Affidavit pursuant to 28 U.S.C. § 1746:

I declare, under penalty of perjury under the laws of the United States that the foregoing statements are true and correct.

Executed December 7, 2022.



David Melton



CNS INTERNATIONAL MINISTRIES, INC.

6417 Shelby 150, Suite A, Bethel, MO 63434-2111 • Phone 660-284-6212 • Fax 660-284-6320
www.heartland-ministries.org • Email cnsmin@hlcommunity.org

October 20, 2021

Captain Christopher S. Jolly
Missouri State Highway Patrol
CJIS Division
Post Office Box 9500
Jefferson City, MO 65102-9500

Sent Via Mail and Fax to (573) 751-9382

Re: HB 557 and the Use of VECHS, FBI fingerprint check and the National Crime Information Center's National Sex Offender Registry

Dear Captain Jolly:

I am the General Counsel for CNS International Ministries, Inc. I am writing to you in regards to HB 557 and the enabling emergency regulations which the Missouri Department of Social Services put in place effective October 1, 2021. The reason I am contacting you is related to the questionable legality of using the VECHS, FBI fingerprint checks and the National Crime Information Center's National Sex Offender Registry systems in the manner prescribed under HB 557 and the previously mentioned regulations.

It is my understanding that during the legislative session, a legislative liaison of the Missouri State Highway Patrol cautioned certain members of the Missouri General Assembly regarding concerns about the Federal and State due process limitations on the use of the previously mentioned databases. This information is admittedly hearsay, so if it is incorrect in any particular, I apologize in advance.

To clarify, it is my understanding that under both Federal and State law, it is unlawful ***to release information on individuals or take adverse action against an individual*** listed on a criminal history record unless or until the individual in question is afforded the opportunity to dispute and correct the record. It is further my understanding that these types of "record pulls" are only authorized under Federal law for those employees, volunteers, contractors and vendors or person that have or may have access to children or other vulnerable populations. It is my understanding that in order for any Authorized Recipient of information to utilize this system, they must represent to the MSHP-CJISD that certain state and federal laws, rules, procedures, and policies, including those adopted by the state, the MSHP-CJISD, FBI CJIS Security Policy, and the National Crime Prevention and Privacy Compact, Section 43.532, RSMo, and title 28 CFR 16.30-34 are complied with. See also 34 U.S. Code § 40102. Likewise, it is the responsibility of the MSHP-CJISD to assure that these Federal and State laws are followed.

October 20, 2021

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Regrettably, the General Assembly did not heed the Missouri State Highway Patrol's cautions. In enacting HB 557, the General Assembly specifically mandated the use of VECHS, FBI fingerprint check and the National Crime Information Center's National Sex Offender Registry well beyond the universe of those individuals permissible. Individuals obligated by the plain language of the statute include:

Officers, managers, contractors, volunteers with access to children, employees, and other support staff of residential care facilities . . . any person eighteen years of age or older who resides at or on the property of such residential care facility; any person who has unsupervised contact with a resident of the residential care facility; and owners of such residential care facilities . . .

§210.493, RSMo. In turn, "Officers" is defined as "any individual who holds an executive position with the LERCF . . . , including, but not limited to: Chairperson of the Board, President, Director, Vice President, Secretary, General Counsel, Headmaster, Principal, Head Teacher, Treasurer or any other individual listed as an officer of the LERCF . . ." 13 CSR 35-71.015(1)(A). "Support staff" or "staff" is defined to "... include any individual who works for or performs services, including professional services, for the LERCF . . . whether compensated or not. Staff can be employees and employees can be staff." 13 CSR 35-71.015(1)(L).

Actual access to children is required only for "... contractors with unsupervised access to children; volunteers with unsupervised access to children; . . . and owners of LERCF . . . that will have access to children." 13 CSR 35-71.015(1)(A) 1. (Compare § 210.493.2., RSMo, which requires access to children only for "... volunteers with access to children . . . ; any person who has unsupervised contact with a resident . . . and owners of such residential care facilities who will have access to the facilities . . ."). The term "Contractors" is not defined in the statute or the regulations, however § 210.493.2, RSMo requires background checks on all contractors, whereas the enabling regulations incongruously requires background checks only on "... contractors with unsupervised access to children . . ." 13 CSR 35-71.015(1)(A) 1.

Simply put, HB 557 and the emergency regulations call upon the Missouri State Highway Patrol to utilize VECHS, FBI fingerprint check and the National Crime Information Center's National Sex Offender Registry in a manner which greatly exceeds that authorized by Federal law (i.e., it is permitted to be used only those employees, volunteers, contractors and vendors or person that have or may have access to children).

My second concern was touched upon earlier. HB 557 as enacted provides no due process prior to adverse employment action being take as a result of an "ineligibility" finding resulting from a search of VECHS, FBI fingerprint check and the National Crime Information Center's National Sex Offender Registry. Pursuant to §210.493.10., RSMo, an individual is determined to be "eligible or ineligible **for employment or presence at the residential care facility . . .**" based upon these searches alone.

October 20, 2021

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Because I know that the Department of Social Services makes specific representations to the Missouri State Highway Patrol and, in turn, the Missouri State Highway Patrol warrants the lawful use and access of the VECHS, FBI fingerprint check and the National Crime Information Center's National Sex Offender Registry to Federal authorities, I thought that this update might be useful to you.

Let me close by expressing our sincere respect and appreciation to the Missouri State Highway Patrol. Approximately two decades ago, both our ministry and your officers found ourselves each in a very difficult position. But even in those difficult circumstances, we deeply appreciated the integrity and professionalism which all of your officers exhibited under trying circumstances.

If you wish to discuss this matter further, please let me know.

Best Regards,

CNS INTERNATIONAL MINISTRIES, INC.



David R. Melton
President and General Counsel

From: [Melton, David](#)
To: [CD.NotifyRPL@dss.mo.gov](#)
Bcc: [Belz, Timothy](#)
Subject: License Exempt Residential Care Facility Notification Form and supplemental documentation
Date: Tuesday, October 12, 2021 4:39:00 PM
Attachments: [LicenseExempt.pdf](#)
[Medical Records Policy.pdf](#)
[Letter Regarding Local Health Department.pdf](#)
[Newark Fire Email Correspondence.pdf](#)
[DCS.JPG](#)
[image001.png](#)

To Whom It May Concern:

The webpage for uploading the notification forms for LERCFs is broken. After approximately ten (10) attempts to upload the required documentation, the webpage repeatedly produces the same error code. Below is a screen shot of one of many failed attempts.

Instructions for Submission and Upload of the License Exempt Residential Care Facility Notification Form and Supplemental Documents

To submit the Notification Form:

1. Click the "Browse\Choose file" button below to add your Notification Form for upload.
2. A pop up box will appear. From the pop up box, select the Notification Form file you want to attach and click the "Open" button.
3. The name of the file that you selected will appear in the field next to the "Browse\Choose file" button.

Error Processes File Upload. ITSD has been notified. Please try again later.

Since the method prescribed by the regulations is unavailable, please accept the attached as our submission on behalf of the following:

Residential Care Facility Name: CNS International Ministries, Inc. d/b/a Heartland Children & Youth Home

Residential Care Facility Address: 6417 Shelby 150, Bethel, Missouri 63434

County: SHELBY

Residential Care Facility Telephone Number: (660) 284-6212

Name and contact information of person submitting information on behalf of facility: David Barton (660) 284-6212 ext. 4212

The required documents are attached. Please acknowledge receipt and submission of the same.

Sincerely,

David Melton
David R. Melton
General Counsel
CNS International Ministries, Inc.
Direct: 816.559.4232
Main: 816.842.6300
Fax: 816.842.7482
david.melton@ozark-national.com

This e-mail message, the information contained in this message and any files or attachments transmitted with it are confidential, may contain information that is privileged, attorney work product exempt from disclosure under applicable law and is intended solely for the named recipient(s) above. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you receive this message in error, please notify me immediately by replying to this message and delete the message and any attachments from your computer. Thank you.

****SECURITY NOTICE****

The Missouri Bar and The Missouri Supreme Court Rules require all Missouri attorneys to notify all e-mail recipients that (1) e-mail communication is not a secure method of communication; (2) any e-mail that is sent to you or by you may be copied and held by any or all computers through which it passes as it is transmitted; and, (3) persons not participating in our communication may intercept our communications by improperly accessing either of our computers or another computer unconnected to either of us through which the e-mail is passed. I am communicating with you by e-mail at your request and with your consent.

In the event you do not wish this form of communication in the future, upon your notification of same, no further e-mail communication will be forthcoming.

Jacob Leckich

From: Newark Fire <newarkmofire@gmail.com>
Sent: Tuesday, October 5, 2021 4:22 PM
To: Jacob Leckich
Subject: Re: Heartland Children & Youth Home

To all parties concerned

The Newark Rural Fire Department has been aware of HB 557 and its additional mandates which are the department's responsibilities. While safety is the number one priority, legislation surpasses the ordinances of the local counties. Neither Knox or Shelby counties have any defined fire codes that can be inspected for. That being said, we have been in touch with the Missouri Division of Fire Safety. To date they have yet to develop an answer to this problem but are aware and seeking a solution. I can attest to the Heartland Children and Youth Home's management as having worked with us on issues such as fire escape recommendations and escape procedures. The lack of local ordinances do restrict us from being able to issue any type of pass / fail certification.

Thank you and Stay safe,

Scott York

Secretary / Treasurer - Missouri Region B Fire Chief's Association

Chief - Newark Rural Fire Department

Newarkmofire@gmail.com

660-341-1144

On Tue, Oct 5, 2021 at 3:38 PM Jacob Leckich <jacob.leckich@hlcommunity.org> wrote:

Good morning,

I am contacting the Newark Fire Department on behalf of Heartland Children & Youth Home. On July 14th, the state of Missouri passed HB 557, which mandates Licensed Exempt Residential Care Facilities to obtain a Fire inspection and certification for their facilities from the local Fire Department.

Are you all aware of this development, and, if so, how can we facilitate such inspection and certification?

Thanks

Jacob Leckich M.A.M.S

CNS International Ministries Inc

Recovery Programs Operations

C: 660-346-1179

Heartland Children & Youth Home Policy and Procedure

Policy Title: Medical Record Keeping		Originating Date: August 16, 2021
Policy Number: ADM-007	Revision Number: 101221	Number of Pages: 4

Policy Statement

It is the Policy of Heartland Children and Youth Homes (HCYH) to acquire, retain and protect the medical records of HCYH residents from unlawful disclosure.

Purpose

The purpose of this policy is to establish guidelines for the contents, maintenance, and confidentiality of resident Medical Records and to define which portion of a resident's information, whether in paper or electronic format, comprises the Medical Record

Scope

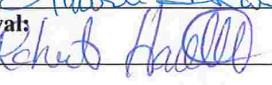
This policy is in effect for all residents of HCYH. This policy may affect individuals in Heartland Men's Recovery Program, Heartland Women's Recovery Program and Heartland Children and Youth Home (Recovery Programs) due to records referencing other family members who may be enrolled in the ministry's other alcohol and drug abuse programs.

Administrative Responsibilities

- HCYH Intake Coordinator collects Medical Records as prescribed in the Intake Procedure (INT-001) and Resident Enrollment Procedure (INT-002) policies.
- HCYH Intake Coordinator and HCYH Administration will acquire, retain and protect the medical records of HCYH residents from unlawful disclosure.

Accompanying Forms

Recovery Program Privacy Notice

Approval: 	Approval: 
Approval: 	Approval Date: 10/12/21

Definitions

Medical Record: Medical Record is defined as those reasonably necessary documents and histories of a medical nature which pertain to an individual resident's acute or chronic sickness, ailment or condition which requires significant ongoing medical care or treatment which is collected in the application and admissions process and collected as he or she is a resident of HCYH. These Medical Records include, but are not limited to, relevant printed materials, relevant audio/visual recordings, and/or relevant electronically stored information.

Procedure

I. Records Acquisition.

The HCYH Intake Coordinator collects Medical Records as prescribed in the Intake Procedure (INT-001) and Resident Enrollment Procedure (INT-002) policies. HCYH Administration will acquire those reasonably necessary documents and histories of a medical nature which pertain to an individual resident's acute or chronic sickness, ailment or condition which requires significant ongoing medical care or treatment which is collected as he or she is a resident of HCYH.

II. Records Retention.

HCYH Intake Coordinator and HCYH Administration will retain and protect the medical records. HCYH Administration will retain those reasonably necessary documents and histories of a medical nature which pertain to an individual resident's acute or chronic sickness, ailment or condition which requires significant ongoing medical care or treatment which is collected as he or she is a resident of HCYH.

- A. A File shall be maintained for every resident who applies and enrolls as a resident of Heartland Children & Youth Home. Included with this file are the medical records necessary for the application and admissions process.
- B. Currently, the Medical Record is considered a hybrid record, consisting of both electronic and paper documentation. Documentation that comprises the Medical Record will exist in paper form in the IMI Operations Managers' filing cabinet, under lock and key. The electronic form is kept in the current HYCH OneDrive file and/or software for each individual resident.
- C. The Medical Record contents can be maintained in either paper (hardcopy) or electronic formats, including digital images, and can include identifiable source information, such as photographs, films, digital images, and/or a written or dictated summary or interpretation of finds.
- D. Medical Records for residents of HCYH will be stored under lock and key while and after a youth or child is a resident of the program. Medical Records will be stored for seven years after the completion or removal from HCYH program.

III. Records Protection.

The placing custodial parent or legal guardian, or a duly authorized representative (custodian, guardian ad litem, or other court appointed representative), may request in writing access to the Medical Records of a minor resident or former resident. After the minor resident has reached the age of majority, the former resident may request in writing access to their Medical Records. The request must be signed by the custodial parent or guardian or the former resident and dated. All requested records will be provided within a reasonable time after the request is made.

HCYH is not a healthcare provider or a healthcare facility. Healthcare providers and healthcare facilities which are subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) limit the sharing of medical records to non-HIPAA compliant entities. While HCYH is not a HIPAA compliant entity, individual medical records of HCYH residents are considered documents in which the residents and their custodial parents or legal guardians have a reasonable expectation of privacy upon both a Constitutional and statutory basis.

REMINDER:

Any warrant, subpoena or administrative demand for Medical Records shall be immediately referred to the Office of General Counsel for review and response.

All staff are reminded that residents in the HCYH may or may not be placed in the program for issues related to alcohol or drug abuse diagnosis, treatment or referral for treatment. In the event of a warrant, subpoena or administrative demand, the following information may be shared immediately with the requesting entity.

CNS International Ministries, Inc. (“CNSIMI”), is exempt from Federal income tax under section 501(a) of the Internal Revenue Code as an organization described in Section 501(c)(3). The Internal Revenue Service issued CNSIMI its recognition of tax exemption letter on October 2, 1995. Heartland Men’s Recovery Program, Heartland Women’s Recovery Program and Heartland Children and Youth Home (Recovery Programs) are operated as ministries of CNSIMI. Pursuant to 42 U.S.C. 290dd-3 and 42 U.S.C. 290ee-3, CNSIMI is required to observe strict confidentiality regarding any patient records of those in the drug and alcohol recovery programs it administers. Pursuant to 42 CFR § 2.11, CNSIMI is a program which holds itself out as providing, and provides alcohol or drug abuse diagnosis, treatment or referral for treatment. Pursuant to 42 CFR § 2.12(b)(4), CNSIMI is the recipient of “Federal assistance” because it is assisted by the Internal Revenue Service of the Department of the Treasury through the allowance of income tax deductions for contributions to the program or through the granting of tax-exempt status to the program. As such, pursuant to 42 CFR § 2.13(2), you are hereby advised that these regulations restrict the disclosure of alcohol or drug abuse patient records. You are further notified that 42 CFR § 2.12(d)(1)-(2) that these restrictions also apply to any persons who receive patient records from such a program. Person means an individual, partnership, corporation, Federal, State or local government agency, or any other legal entity. Pursuant to 42 CFR § 2.20, “no state law may either authorize or compel any disclosure prohibited by the regulations in this part.” A court of competent jurisdiction may enter a “unique kind of court order. Its only purpose is to authorize a disclosure or use of patient information which would otherwise be prohibited by 42 U.S.C. 290dd-2 and the regulations in this part.” 42 CFR § 2.61(a). The program “may not disclose the records in response to the subpoena unless a court of competent jurisdiction enters an authorizing order under the regulations in this part.” The procedures and criteria for such orders require notice and a hearing as specified in 42 CFR § 2.64 for noncriminal purposes and 42 CFR § 2.65 for the criminal investigation or prosecution of program patients.

Any request for information which asks that the Recovery Programs acknowledges the presence of individuals participating in them will be responded to in accordance with 42 C.F.R. § 2.13(c), which provides:

- (1) The presence of an identified patient in a health care facility or component of a health care facility which is publicly identified as a place where only substance use disorder diagnosis, treatment, or referral for treatment is provided may be acknowledged only if the patient's written consent is obtained in accordance with subpart C of this part or if an authorizing court order is entered in accordance with subpart E of this part. The regulations permit acknowledgement of the presence of an identified patient in a health care facility or part of a health care facility if the health care facility is not publicly identified as only a substance use

disorder diagnosis, treatment, or referral for treatment facility, and if the acknowledgement does not reveal that the patient has a substance use disorder.

(2) Any answer to a request for a disclosure of patient records which is not permissible under the regulations in this part must be made in a way that will not affirmatively reveal that an identified individual has been, or is being, diagnosed or treated for a substance use disorder. An inquiring party may be provided a copy of the regulations in this part and advised that they restrict the disclosure of substance use disorder patient records but may not be told affirmatively that the regulations restrict the disclosure of the records of an identified patient.

Note that these restrictions may include any references in family members' medical records to anyone currently or historically in the Recovery Programs for any type of substance abuse issues.



700 E. Main Street
Shelbyville, MO 63469

Phone: [573-633-2353](tel:573-633-2353)
Fax: [573-633-2323](tel:573-633-2323)

October 6, 2021

Heartland Children & Youth Home

Dave Barton

6417 Co Rd 150 A,
Bethel, MO 63434

Dear Mr. Barton:

The Shelby County Health Department (SCHD) questioned the Missouri Department of Health and Senior Services (MO DHSS) regarding "Local Health Department Inspection Certificate" evaluation criteria, for "all license-exempt residential care facilities" under the "Residential Care Facility Notification Act". The Department of Social Services (DSS) is the Act defined department. MO DHSS determined inspections were only to be completed according to local ordinance or informed to do so.

SCHD operates as a Local Public Health Agency (LPHA) under MO DHSS rules without local regulatory ordinances. There are laws, regulations and guidelines for programs such as lodging, food establishments, on-site wastewater treatment systems and childcare facilities sanitation inspections. DSS Residential Care Facility Notification Act facility specific health and sanitation inspection certificate standards are not identified or determined. **Facilities listed below and future additional Heartland Children & Youth Home homes and sites will not be inspected nor receive a "Local Health Department Inspection Certificate" under current "Residential Care Facility Notification Act", 1354S.04T 2021, and emergency rule filed September 17, 2021, effective October 1, 2021 and expiring March 29, 2022, provisions.**

310 New Creation Road
Bethel MO 63434

312 New Creation Road
Bethel MO 63434

If you have questions feel free to call the number above or email msnyder@maconmohealth.org

Cordially,

A handwritten signature in black ink, appearing to read "Mark L. Snyder".

Mark L. Snyder
Public Health Environmental Specialist, 804
Shelby County Health Department



STATE OF MISSOURI
DEPARTMENT OF SOCIAL SERVICES
**LICENSE EXEMPT RESIDENTIAL
CARE FACILITY NOTIFICATION**

<input type="checkbox"/> New	<input type="checkbox"/> Supplemental Update
DATE	REASON FOR UPDATE

RESIDENTIAL CARE FACILITY INFORMATION

FACILITY NAME **STREET ADDRESS**

MAILING ADDRESS _____

RESIDENTIAL CARE FACILITY STAFF INFORMATION

OPERATOR NAME OPERATOR PHONE DIRECTOR EMAIL ADDRESS FACILITY CONTACT Director
 Owner Operator

License exempt foster home Camp
 Boarding School Congregate Care Facility Other (describe)

OPERATING AGENCY OR ORGANIZATION INFORMATION

NAME _____

DESCRIPTION, INCLUDING A STATEMENT AS TO WHETHER THE AGENCY OR ORGANIZATION IS INCORPORATED TO INCLUDE STATE OF INCORPORATION

AND CORPORATE (ATTACH ADDITIONAL PAGES IF NECESSARY):

SPONSORING ORGANIZATION INFORMATION

NAME _____ ADDRESS _____

LIST SCHOOL(S) AND ADDRESS ATTENDED BY THE CHILDREN SERVED BY THE RESIDENTIAL CARE FACILITY (ATTACH ADDITIONAL PAGES IF NECESSARY):



STATE OF MISSOURI

DEPARTMENT OF SOCIAL SERVICES

LICENSE EXEMPT RESIDENTIAL CARE FACILITY NOTIFICATION

SUPPLEMENTAL DOCUMENTS - If No or Not Required, please provide detailed statement regarding reason certificates not provided					
	YES	NO	NOT REQUIRED		
Fire and safety inspection certificate(s):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Health & Sanitation inspection certificate(s):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Agency policy demonstrating that medical records are maintained for the children served:	<input type="checkbox"/>	<input type="checkbox"/>			
List of all staff members, volunteers, and any individual eighteen (18) years or older who reside at or on the property of the residential care facility (attach additional pages if necessary) at this time of this Notification being filed.					
FOR DSS USE ONLY					
Full Legal Name	Last 4 of SSN	Date of Birth	Job Title/Role	Date Fingerprints Received	Eligible
					<input type="checkbox"/> YES <input type="checkbox"/> NO



STATE OF MISSOURI
DEPARTMENT OF SOCIAL SERVICES
LICENSE EXEMPT RESIDENTIAL CARE FACILITY NOTIFICATION

SUBMITTED BY

DATE

I hereby attest and affirm, subject to the penalties of perjury, that I am the Director of the facility or the Director's designee, and that I am authorized to execute this Notification Supplemental Notification and attestation on behalf of the notifying entity and that the information contained in the Notice and the supporting materials are true, accurate, and complete. I hereby further attest and affirm that the facility actually maintains medical records for each child served by the facility according to the written policy of the facility, a copy of which is submitted as supporting materials to this Notification.

I further certify, under oath and subject to penalty of perjury, that all individuals who are required to successfully complete background checks pursuant to 210.493 and 13 CSR 35-71, have completed background checks and are eligible as provided by law.

SIGNATURE

DATE

[Submit/Upload](#)